

VERBUM E IUS

Predicazione e sistemi giuridici nell'Occidente medievale / Preaching and legal Frameworks in the Middle Ages

a cura di Laura Gaffuri <u>e Rosa Maria Parrinello</u>





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Jewish Law in Medieval Jewish Preaching

by Marc Saperstein

Jewish preaching is integrally bound to aggadah — the non-legal components of classical rabbinic literature — rather than halakhah, Jewish law. Nevertheless, the extant texts of medieval Jewish sermons contain abundant evidence of legal material in its broader sense, regulating all aspects of Jewish life including both the realm of ritual (prayer, kashrut, observance of the Sabbath) and topics of civil law (vows, obligations to the poor, lending money on interest). Examples are taken from sermons delivered at Toledo in 1281 (Todros ben Joseph Abulafia), early fifteenth-century Saragossa (Zerahiah Halevi), early fifteenth-century Byzantine Jewish sermons, and in Spain on the eve of the 1492 Expulsion (Isaac Aboab).

Middle Ages; 13th-15th Century; Law and Religion; Spain; Byzantine World; *Aggadah*; confraternity; *Halakhah*; *Kashrut* (Dietary Laws); *Neder* (vow); Rebuke; *Responsum*; *Tsedakah* (Charity); Talmud; Torah; Yom Kippur; preaching; sermon; law; Todros ben Joseph Abulafia; Zerahiah Halevi; Isaac Aboab.

1. Halakhah and aggadah

Both in common usage and in much traditional Jewish discourse, legal and homiletical material, the realm of the lawyer and the realm of the preacher, are assumed to be fundamentally distinct. The legal passages of the Torah are clearly of a different genre from the narratives that preachers frequently find so fertile for their discourse. The rabbinic literature of Talmud and Midrash is commonly divided into the categories of *halakhah* (Jewish law) and *aggadah*, often defined as "everything else", but frequently characterized as homiletical material actually connected with preaching in the ancient synagogues. There is a common consensus that the legal conclusions of the rabbis attested in the Talmud are binding upon Jews, while the aggadah, including statements with important theological significance, are valuable to be sure, but – with few exceptions – not considered to be binding upon Jews to believe¹.

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¹ A classical formulation of this distinction was made by Rabbi Moses ben Naḥman (RaMBaN)

This division of categories is an oversimplification. Not infrequently, medieval and early modern Jewish preachers did indeed incorporate legal material into their sermons. Now in order to understand the significance of this statement, I need to clarify two possible understandings of "legal material". One would be a narrow definition: laws analogous to the role of law in our society, pertaining to criminal, civil, and personal status issues. The other understanding is much broader and much more fitting the medieval context of Jews, Muslims, and to some extent the Roman Catholic Church. For the Jews, halakhah includes laws pertaining to criminal acts, financial disputes, marriage and divorce. But it is much broader than that, as can be seen in the great codifications of Jewish law: it includes what one may and must not eat, what one may, must and must not do on the Sabbath and holy days, the rules regarding public prayer and the structure of the liturgy for daily and holiday worship, and many other areas we associate with religious life.

It is in this sense that we find legal material entering into medieval Jewish sermons. Two of the most significant preaching occasions were the Sabbath preceding the holiday of Pesach, and the Sabbath between Rosh Hashanah and Yom Kippur. According to traditions that go back to the Talmudic period, rabbis were expected to deliver lengthy sermons on these occasions, and while these were not restricted to Jewish law, this was often a significant component. The laws regarding the holiday of Pesach, especially those pertaining to foods that may and may not be eaten, are extremely complicated, and rabbis believed it to be their responsibility to remind Jews from the pulpit of the rules governing what they were expected to do. (Sometimes this could be carried to excess: a fifteenth-century rabbi from Saragossa was excoriated hyperbolically with the accusation that on the Sabbath preceding Pesach, «he would ascend the pulpit and preach for six hours on the laws of *haroset* and parsley», both of them foods used as a relatively insignificant part of the seder service².

This rather technical material might not always be fully recorded in the written texts that have been preserved. Jacob Anatoli, a thirteenth-century preacher from southern France, left a manuscript of a sermon appropriate for

in the context of the mid-thirteenth-century Disputation of Barcelona: «We have a third kind of writing, called *Midrash*, that is to say sermon literature [sermones, in the Hebrew original], of the sort that would be produced if the bishop here should stand up and deliver a sermon which someone in the audience who liked it would write down. To a document of this sort, should any of us extend belief, then well and good, but if he refuses to do so no one will do him any harm (...). Furthermore, this literature is given by us the title aggadah, which is the equivalent of razionamiento in the vernacular, that is to say it is purely conversational in character». For a broader discussion of the authority of aggadah, see Saperstein, Decoding the Rabbis, pp. 8-11; the passage cited is quoted there on p. 11.

² By contrast, the leading rabbinic figure of Aragon at the end of the fourteenth century, Ḥasdai Crescas, wrote the text of a sermon for Pesach in which he engages in an analysis of the laws regarding the requirement of cleansing the home from leaven that would have been both of intellectual interest and practical significance to his listeners: Ravitzky, *Crescas' Sermon on the Passover*, pp. 160-164.

this Sabbath preceding Pesach, in which he wrote, «Here is a place where one may preach about the laws of leavened and unleavened bread and their ramifications. At the end, one should say that all this comes to remind us of the marvelous redemption that follows after harsh servitude». But other texts, including some of the earliest extant European Jewish sermons, are primarily devoted to the legal issues regarding the holiday of Pesach. Some preachers moved from the details of what one could eat to a deeper significance, such as the conclusion in a late thirteenth-century text that «the prohibition of leaven contains an allusion to the Evil Urge, over which man is obligated to make the Good Urge dominant»³.

Similarly with sermons for the Days of Awe in the autumn. The central theme was repentance and forgiveness, but Jewish law demanded that before an individual was entitled to ask forgiveness from God for a sin that harmed another person, he was required to make restitution and receive pardon from the person whom he had hurt. This process had legal significance and was frequently addressed from the pulpit. In addition, a major responsibility of the preacher especially at this time of year was that of rebuke: chastising the congregation for what they were doing wrong. For this too, the rules had to be explained.

I will move now to several specific examples of sermons that are not connected with these major preaching occasions.

2. Todros ben Joseph Abulafia

The first was delivered in Toledo in the year 1281; the preacher was a well-known figure: the elderly rabbi, mystic and courtier, Todros ben Joseph Abulafia. The circumstances were rather dramatic: at the end of a long and glorious reign, King Alfonso *el Sabio* of Castile responded viciously to a revolt let by his son Sancho; many Jewish courtiers were caught in the middle and bore the brunt of the king's fury. The community of Toledo was especially devastated. Under these circumstances, the common response of Jewish preachers was not to lash out against the king, or even those who had conspired against him, but to turn inward. The harrowing events that occurred must be the expression of God's will; it must be a punishment for our failing to fulfill our obligations under the covenant. The preacher's responsibility was therefore to identify specifically what these failings were and how they can be rectified – and this includes important legal material.

Many of the complaints in the sermon cluster around two themes – relations with women, and relations with Gentiles – which overlap on the issue of Gentile servant women (primarily Muslims) living in Jewish homes. We see a concern for defending traditional standards of modesty for Jewish women

³ Saperstein, Preaching for Pesach, in Saperstein, «Your Voice Like a Ram's Horn», pp. 12-13.

and morals for Jewish men in a passage such as the following, which comes at the very end of the 1281 sermon text:

There is also the matter of the bride: they may allow her [face] to be uncovered *before* the wedding, but they should cover her after the wedding. The law is not in accordance with the [Talmudic] rabbi who says that it is permissible to gaze upon the bride [following the wedding ceremony; this is not permissible] even for a single hour⁴. Furthermore, people *must* recognize her *before* her marriage, so that there can be witnesses to the marriage. Also, there should always be two special witnesses there to observe the ring beforehand and ascertain whether it is worth a *prutah* or not, and they may hear the betrothal formula said by the husband⁵.

Here we see a tension between popular practices and strict legal standards pertaining to a central institution of Jewish life.

A different issue concerns women in the context of the laws regulating relations between Jews and Gentiles. Talmudic legislation prohibited Jews from eating bread baked by a Gentile. But conditions of the medieval Jewish community often made it unfeasible for Jews to maintain their own bakeries, and so the rabbis took a lenient stance: so long as the Jewish woman threw a wooden chip into the oven, they would consider it as if the baking was being done jointly by a Jew and a Gentile, and the bread could be eaten⁶. But we see from this sermon that problems arose:

Also, a woman must not bring *cazuela* [or *panada*]⁷ to the oven of a Gentile and give it to the baker to bake along with the bread. She must herself place it in the oven, not the baker, whether he is a Muslim or a Christian. The wooden chip that the women throw into the oven, or their raking of the coals under the *cazuela* or the fire in the oven under the chip does not help here. The permission of the rabbis applies only to bread.

⁵ The requirement of proper witnesses to testify that the betrothal ceremony has been carried out properly is crucial in determining the marital status of the woman. Indeed, there was some effort at this time to pass communal ordinances requiring the presence of ten witnesses: see Elon, *Jewish Law*, 2, pp. 711-712, 853-855.

⁶ M. 'Avodah Zarah 2:6; B. 'Avodah Zarah 38b; Tosafot there, *va'ata*; Maimonides, *Mishneh Torah*, *Hilkhot Ma'akhalot Asurot* 17: 12-13; R. Asher on 'Avodah Zarah, chap. 2, sect. 33; Katz, *Exclusiveness and Tolerance*, p. 40.

⁷ Cazuela is both a clay implement in which cooked foods were prepared and the name of a dish, made with various vegetables and meat and cooked in this implement (apparently linked with our "casserole"). See *Diccionario de autoridades*, 1, pp. 247-248; *Diccionario critico etimológico castellano e hispanico*, 1, p. 934. *Panada* (or possibly, *panarra* or *panata*), apparently refers to some kind of breaded dish; see *Diccionario critico etimológico*, pp. 364-366.

⁴ See B. Ketubot 17a: «R. Samuel bar Naḥmani said in the name of R. Joḥanan, "It is permissible to gaze upon the bride during the entire seven days [of the wedding festivities] in order to make her more desirable to her husband". But the *halakhah* is not in accordance with him». R. Asher ben Jeḥiel, who came from Germany to Toledo some two decades after the sermon was delivered, wrote on this passage, "There are those who say that for the rest of the wedding week it is prohibited, but on the first day, the day of most intense love in the husband, it is permitted, for if it were not so, who would testify that she went out with a veil and her hair uncovered? But this is not the case. It is forbidden to gaze upon the bride for even a single hour. When they see the veil that was made and say, "This belongs to such and such a bride", that counts as testimony. Also, seeing the veil when she is wearing it or the uncoverning of her head is not the same as gazing at her face» (R. Asher on Ketubot, chap. 2, sect. 3). Cfr. also *Tur, Even ha-Ezer* 21.

Apparently there was an attempt to push this leniency further, and the preacher protested, and tried to draw the legal line clearly.

Considerable attention is given to the problems arising from having Gentile servant women living in the house. There are two aspects of such problems. First is using these servants to circumvent established Jewish laws, such as the prohibition of taking interest from a fellow Jew: «They must also prevent the servant woman of a Jew from lending on interest to another Jew, for whatever the servant woman acquires is the acquisition of her master, and it is as if the Jew himself made the loan on interest». This was clearly a ruse, a legal fiction to evade the law, and the rabbis opposed it strenuously. I will return to the law prohibiting lending on interest to another Jew near the end of my presentation.

Gentile servants raised a series of legal issues pertaining to the observance of the Sabbath. We see the tension points in passages from the sermon such as the following:

Concerning the Sabbath. They command their servant women to kindle lights, and other such things. It is absolutely clear that this is forbidden. It is obviously forbidden to command them, for whatever a Jew may not do he must not tell a Gentile to do. More than this: even if one does not command the Gentile, it is still forbidden to benefit from their work, as is written in the Talmud [B. Shabbat 122a], "If a Gentile kindles a candle, a Jew may use its light, but if it is done *for* the Jew, it is forbidden to use its light".

As for those who command Christians or Muslims to write on the Sabbath because of their own necessities, or because of matters pertaining to leased properties – there being no lives endangered or urgent communal concern – it is obvious that this is forbidden and a profaning of the Sabbath to command a Gentile to do work for a *public* need is forbidden unless there are lives endangered, and all the more so is it forbidden for a private need.

Here, as elsewhere in the sermon, the preacher cites Talmudic passages in support of his point. This suggests that he was not simply speaking as an authority to a group of ignorant listeners who felt obligated to accept whatever he said. For some, who may not have known the law and followed their own traditions, the sermon may have served an educational function. The permissibility of using Gentiles for various tasks on the Sabbath represented a complicated interaction of legal mandates and practical needs, and the preacher apparently felt the need not only to educate but to substantiate his position⁹.

⁸ Cfr. also the earlier passage, «Concerning the Sabbath. You already know that it teaches about the creation of the world, and also about the world to come. God has commanded us to rest on it. It is forbidden to *think about*, let alone to deal with, our possessions. Nor may we tell a Gentile to do something – not to write, not to kindle a candle, not to kindle a fire in the winter – for it is forbidden to benefit from any work done on the Sabbath».

⁹ On this issue, see the excellent study by Katz, *The «Shabbes Goy»*, especially pp. 50-52. For a fuller discussion of the sermon as a whole, see Saperstein, *Leadership and Conflict*, chap. 1.

3. Zerahiah Halevi

The second example is a sermon by Zerahiah Halevi from early fifteenth-century Spain that I published from manuscript in both the original Hebrew text and an annotated translation¹⁰. It was delivered not as part of a Sabbath or holiday service, but at a special gathering in the synagogue of the Society for the Pursuers of Justice (*Rodefei Tsedeq*), a confraternity probably from Saragossa.

The biblical text for the sermon is Psalm 76,12, «Make vows and pay them to the Lord your God»; and the preacher announces that the subject of his sermon will be an analysis of the central term in this verse, the *neder* or *vow*. Perhaps best known from the opening of the Yom Kippur evening liturgy, *Kol Nidre*, «All vows», this is indeed a legal category, presented in legal sections of the Torah (eg. Num 30,3, Deut 23,22-24), to which an entire tractate of the Talmud (Tractate Nedarim) is devoted.

The most interesting part of the sermon in my judgment is the third component, where the preacher raises a challenging theoretical question: is an act performed in fulfillment of a vow more or less praiseworthy than the same act done without the vow? He treats this as a formal "disputed question" following the classic scholastic format: five arguments why such an act is more praiseworthy, four arguments for the antithetical position, five true underlying premises on which all would agree and the conclusion based on a distinction, followed by refutations to the five initial arguments. It turns out – though I did not know this when I published the text – that Thomas Aquinas treated precisely this question in a somewhat less extensive manner. But since the question is defined as which is more praiseworthy, it is more an exercise in ethical reasoning than in strictly legal analysis.

However, the detailed definition of the vow with which the preacher begins this section does indeed sound like a point of law: the vow is «a binding agreement, uttered verbally, to do something or not to do it, teaching about a matter in the soul, by choice, upon which acquiescence rests». There is no such definition of a vow in the Bible or the Talmud; in his comprehensive Code of Jewish law, Maimonides does not bother defining the vow, to which he devotes chapters of analysis. After the definition is presented, each of its components is analyzed in detail. The definition, which may also be influenced by Christian sources (though not Aquinas), reveals what we might well consider to be a legal mind at work¹².

¹⁰ Saperstein, *«Your Voice Like a Ram's Horn»*, pp. 179-250. The manuscript does not provide the name of the preacher, and I did not suggest one; the identification of the author as Zerahiah Halevi, a disciple of the influential rabbi and thinker Ḥasdai Crescas, was made by Ackerman in his doctoral dissertation, *The Philosophic Sermons of R. Zeraḥiah Halevi Saladin*.

¹¹ Ackerman, *Zerahia Halevi Saladin and Thomas Aquinas on Vows*, pp. 47-71. Thomas Aquinas, *Summa Theologica*, II^aII^{ae}, qu. 88, Pars 6: «More meritorious to do a thing from a vow, or without a vow?».

¹² Compare the precise definition of theological terms such as "prophecy" and "immortality"

4. Byzantine Jewish preaching

My third example is taken from a collection of manuscript sermons delivered in the early fifteenth century in the Byzantine Empire. In these sermons, the preacher cites a full range of Jewish legal authorities on more than a few occasions¹³. Some of the issues pertaining to religious matters, such as the mandatory afternoon prayer called *Minhah*. The preacher notes that Jews who had to work throughout the day would say the afternoon prayer individually; but this made it less likely that the public prayer in the synagogue would have the legal quorum of ten (minuan) necessary for mourners to say the *Kaddish* or mourner's prayer. He therefore raises the following questions of Jewish law. Could a Jew who had already fulfilled his obligation as an individual join the community before the Kaddish and be counted for the quorum? What is the minimum age at which a child may be counted? Some authorities permitted counting a child below age 13 who is holding a Torah scroll, others even permitted a child of 9 holding a codex of the Pentateuch. All these legal positions are noted and discussed in a sermon triggered by Abraham's negotiation with God to save the city of Sodom if ten righteous men could be found.

My favorite passage in this manuscript is triggered by a Talmudic discussion of the obligation to give charity (*tsedakah*) (B. Baba Metsia 71a). The Talmud sets up a hierarchy of priorities that places responsibility toward those nearby higher than those who are emotionally and geographically far away. Here is how the preacher resolves an ambiguity in the Talmudic formulation, beginning with a citation from a legal responsum regarding the strangers or aliens in our midst. Rabbi Isaac ben Barukh wrote in response to a legal question:

The [Talmudic] statement "The poor of your city have priority over the poor of another city" (B. Baba Metzia 71a) means that that you do not send charity to a different city if it is needed in your own. But regarding those who *come* from a different city to yours, we do *not* say, "The poor of your city have priority". Rather, we diminish the amount to be given for the local poor in order to give to the poor who have come from elsewhere.

This is the end of the quotation from the responsum. The preacher then continues:

Even though [Jacob ben Asher] the author of the Turim [the most important post-Maimonidean Code of Jewish law from a century earlier: *Yoreh De'ah* 251] states that he is not persuaded by this decision, in fact the reasoning makes sense to me. A poor person who comes from afar and knows none of the local people is in danger of dying of starvation. Whoever draws him near is worthy of a great reward for hospitality. We do not investigate who this foreigner is and what he is about before giving to him; rather,

by Zerahiah's master Ḥasdai Crescas in his major philosophical work, *Or Ha-Shem*, 2,4,1 and 3,1,2,1, and — more relevant to our sermon — the definition of the Passover commandment of cleaning out anything leavened in his sermon for Passover (above, note 2, cfr. Ackerman, *The Philosophical Sermons*, p. 52). Like Zeraḥiah, after providing what appears to be an original definition, Crescas analyses each of the components in his definition.

¹³ Saperstein, Kanarfogel, A Byzantine Manuscript of Sermons.

we should give to whoever holds out his hand in need. The Sages have said that even a Gentile should be given food together with poor Jews for the sake of peaceful relations; how much more so the foreign Jew¹⁴.

Unfortunately, such medieval empathy for the stranger, extending even to the needy Gentiles, is both in legal codes and sermons rather unusual.

5. Isaac Aboab

My final text is by Isaac Aboab, one of the greatest Talmudists in the generation of the Expulsion from Spain, who was not afraid to speak out about social justice among Jews in his sermons. Let me begin, however, by citing one of the few legal responsa that have been preserved by this rabbi. It deals with a trustee who sold the portion of a house belonging to orphans; when they reached maturity, the orphans challenged the validity of the sale. Like the Byzantine preacher just cited, Aboab shows considerable independence in his decision, writing:

The Talmudic statement [B. Gittin 52a] that trustees may not sell real estate applied to their age, when real estate was the basis of their livelihood, and their primary responsibility pertained to it. Today, however, when our livelihood is based primarily on moveable property, which is better than real estate in every respect, and it is well known in our time that there is no work more demeaning than [that involving] real estate [cf. B. Yebamot 63a], we should change the law in accordance with the place and the time (...). In this decision of mine, I do not rely on anyone else, for I have not found it in any other legal authority. However, together with my other arguments, this is what the law should be15.

Similar/Considerable independence is revealed in a sermon where he discusses the problem of loans to the poor in the context of the Biblical legislation (Deut 15,7-9), then proceeds to make a specific contemporary application:

This problem pertaining to loans has arisen many times, especially where I live, Because the Torah forbids the taking of interest when a loan is given to a Jew, Jewish money-lenders do not want to extend credit to other Jews. Since the impoverished Jew cannot get an interest-bearing loan as a Gentile can, he cannot find the money he needs, and he dies of hunger. Thus the commandment turns into a transgression. I am tempted to say that it should be considered a greater sin for someone to refuse to make the loan than it is for someone to make the loan and take interest, for in the first case there is danger and in the second there is not. (...) I have dwelt at length on this because I see wretched Jews crying out and not being answered, because of our sins, in this time of dearth16.

¹⁴ Ibidem, p. 173. On the legal statement in the final sentence, see Moses Maimonides, Code of Jewish Law (Mishneh Torah), Laws of Gifts to the Poor 1,9.

¹⁵ Shiv'ah Einayim, Leghorn, 1745, pp. 54a-58b; quotation from 55a. Cfr. the use of this responsum by Gutwirth, Abraham Seneor, p. 214. On changing the law because of changed historical circumstances, see Jacobs, *A Tree of Life*, pp. 122-165.

16 «Qetsat Parashiyot me-ha-RR'Y. Aboab», Oxford Bodleian MS 952, Huntingdon 342, fol. 16a;

I find this to be a rather extraordinary passage. Jewish ethical and homiletical literature is filled with denunciations by moralists of businessmen who fail to observe properly the prohibitions against loans on interest; rabbis frequently emphasize the seriousness of these laws and urge that Jews consult with competent authorities who will keep them from improper loans¹⁷. Rarely do we find a leading rabbinic figure saving, in effect, that the transgressions entailed in taking interest from a fellow Jew are less serious than depriving the poor of what they need to survive. Just as in the responsum, he insists that the law should be adapted to changing economic circumstances, here the preacher insists that the negative consequences of obeying the law – even an explicit commandment of the Torah – must be considered in deciding whether to enforcing it. And he said this from the pulpit to an entire community of Jews. To my mind, this statement bespeaks a leader of considerable conscience and courage for whom the sermon could be a vehicle not only for teaching the law, but for adapting it to the most pressing humanitarian needs of the time.

for the full sermon in which this appears, see Saperstein, *«Your Voice Like a Ram's Horn»*, pp. 293-365, with English text pp. 313-314 and Hebrew text, pp. 346-347. For possible datings of the reference to "this time of dearth», see *ibidem*, p. 295, note 9. For a fuller discussion of Aboab's preaching in its historical context, see Saperstein, *Leadership and Conflict*, chap. 7.

¹⁷ See examples in Saperstein, *«Your Voice Like a Ram's Horn»*, pp. 138-139. Azariah Figo, a Seventeenth-century Italian preacher, condemned the financial arrangements of Jews in his community in the following words: «If a group of Jews were to be seen going to a Gentile butcher and were then seen publicly eating pig or other forbidden meat, they would be stoned by all, although this entails only one negative prohibition, for which the punishment is lashes. Yet here we see those who lend money on interest, which involves six transgressions for the lender, as well as others for the borrower, the guarantor, the witnesses and the scribes, and all are silent» (*ibidem*, p. 101).

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